

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2007-051281

05/16/2016

HONORABLE JAY M. POLK

CLERK OF THE COURT

D. Kenney

Deputy

IN RE THE MATTER OF  
MARIO ALBERTO KENNEDY

MARIO ALBERTO KENNEDY  
2028 E PARKSIDE LN  
PHOENIX AZ 85028

AND

ALEXANDRA MARIA CUCOLI

LOUIS K LOMBARDO

FAMILY SUPPORT SERVICES-CCC

MINUTE ENTRY

Courtroom 107 NE RCC

Prior to hearing commencing, Petitioner's Exhibits 1 through 5 and Respondent's Exhibit 6 is marked for identification.

1:34 p.m. This is the time set for Evidentiary Hearing re: Petitioner's Petition to Modify Parenting Time and Child Support filed on October 16, 2016. Petitioner is present on his own behalf. Respondent is present telephonically with counsel, Louis Lombardo, who appears in the courtroom.

A record of the proceedings is made digitally in lieu of a court reporter.

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Mario Alberto Kennedy and Alexandra Maria Cucoli are sworn.

Discussion is held.

Pursuant to matters presented,

IT IS ORDERED that by no later than **August 31, 2016**, Mother shall complete the Parent Educational Program and file a certificate of completion with the Clerk of Court. If Mother fails to complete the Parent Educational Program as ordered, such parent may be held in contempt of court. In addition, neither parent shall file any subsequent pleadings to modify or enforce any provisions of this order until that parent has filed proof of completion of the Parent Educational Program. A "Parent Educational Program Notice" is available to the parties at the Self Service Center and the Family Court filing counter. The notice details the program's requirements and includes a list of approved parent information classes.

Mario Alberto Kennedy testifies.

Alexandra Maria Cucoli testifies.

Respondent's Exhibit 6 is received in evidence.

3:38 p.m. Court stands at recess.

3:43 p.m. Court reconvenes with both parties and Mother's counsel present.

A record of the proceedings is made digitally in lieu of a court reporter.

Alexandra Maria Cucoli testifies further.

The Court has considered the testimony and evidence presented and the factors contained in A.R.S. § 25-403 and finds as follows:

1. The past, present and potential future relationship between the parent and the child:  
Mother has been the child's primary residential parent since the child's birth in 2006. The child has a strong bond and attachment to Mother. The child is not as well bonded to Father, who has had only sporadic parenting time with the child since her birth almost ten years ago. Father has not seen the child in almost two years. The last time the child was in the United States for parenting time with Father was in 2010, when the child was only four years old.

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2. The interaction of the child and interrelationship with the parents, the child's siblings and any other person who may significantly affect the child's best interest: See the Court's findings with regard to Factor number 1.
3. The child's adjustment to home, school and community: The child is very involved in tennis in Romania and is a ranked player there. No other evidence was presented as to this factor.
4. If the child is of suitable age and maturity, the wishes of the child as to legal decision-making and parenting time: The child is only nine years old and, thus, is not of suitable age or maturity for the Court to give her wishes any weight.
5. The mental and physical health of all individuals: No credible evidence was presented to suggest that either parent or the child has any significant mental or physical health issues that would impact parenting time.
6. Which parent is more likely to allow frequent and meaningful continuing contact with the other parent: Neither parent is more likely than the other parent to allow the child to have frequent, meaningful, and continuing contact with the other parent.
7. Whether one parent intentionally misled the court to cause an unnecessary delay, to increase the cost of litigation or to persuade the court to give a legal decision-making or a parenting time preference to that parent: Neither parent has intentionally misled the Court to cause an unnecessary delay, to increase the cost of litigation or to persuade the Court to give a legal decision-making or a parenting time preference to that parent.
8. Whether there has been domestic violence or child abuse pursuant to § 25-403.03: No domestic violence or child abuse has occurred in connection with the parents or the child in this case.
9. The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding legal decision-making or parenting time: The parents have not reached any agreements regarding legal decision-making or parenting time. Therefore, this factor does not apply.
10. Whether a parent has complied with the Parent Educational Program: Father's proof of compliance with the Parent Education Program requirement was filed on September 20, 2007. Mother has never attended the Parent Education Program class.

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11. Whether either parent was convicted of an act of false reporting of child abuse or neglect:  
Neither parent has been convicted of an act of false reporting of child abuse or neglect.

THE COURT FURTHER FINDS, relevant and significant, that the child has never been away from Mother for more than two days and has not spent time with Father in the United States in approximately six years and that Father has exercised only sporadic parenting time with the child over the past eight and a half years.

THE COURT FURTHER FINDS that the following parenting time schedule is in the child's best interest:

IT IS ORDERED, effective today, that the child shall reside exclusively with Mother in Romania and have parenting time with Father in the United States every summer as follows:

- During the child's 2016 summer break, for 14 consecutive days,
- During the child's 2017 summer break, for 21 consecutive days, and
- During the child's 2018 summer break and for all summer breaks thereafter, for 28 consecutive days.

IT IS FURTHER ORDERED that by **May 31, 2016**, Father shall provide Mother with an itinerary for the 2016 summer break parenting time. For all future years, by April 15 of each year, Mother shall provide Father with the dates of the child's summer break, and by May 15 of each year, Father shall provide Mother with the itinerary of the child's trip to the United States for that summer's parenting time. If Father fails to provide Mother with such itinerary by May 15, Father shall forfeit his parenting time for that year. All information required to be exchanged pursuant to this paragraph shall be conveyed by e-mail.

IT IS FURTHER ORDERED that one time per calendar year, Father may exercise up to 14 consecutive calendar days of parenting time with the child in Romania upon giving Mother at least 45 days advance notice via e-mail. This parenting time is in addition to Father's summer parenting time.

IT IS FURTHER ORDERED that nothing in these orders shall preclude Mother from allowing Father to exercise additional parenting time with the child in Romania or the United States.

IT IS FURTHER ORDERED that Mother shall not impede Father's ability to contact the child electronically by telephone, e-mail, text message, videoconference and social media, and Father may have reasonable contact with the child electronically.

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IT IS FURTHER ORDERED that this parenting time schedule shall fully replace the 2007 parenting time schedule.

LET THE RECORD REFLECT that Mother agrees to allocating 28 days of parenting time to Father for child support purposes effective immediately.

As to the issue of child support,

THE COURT FINDS that Father has not demonstrated a substantial and continuing change of circumstance regarding his income. In 2007, the Court found that Father's gross income for child support purposes was \$4,300.00 per month. Father has not demonstrated a change of circumstance that is substantial and continuing. Therefore, the Court will continue to attribute to Father income of \$4,300.00 per month.

THE FURTHER COURT FINDS that the relevant financial factors and the discretionary allowances and adjustments that the Court will allow for a current calculation of child support pursuant to the Arizona Child Support Guidelines are set forth in the Child Support Worksheet prepared by the Court and filed separately. The Court hereby incorporates and adopts as its findings with respect to child support such Child Support Worksheet.

In applying these findings under the Arizona Child Support Guidelines,

THE COURT FURTHER FINDS that no deviation is appropriate regarding the obligation to pay child support.

IT IS THEREFORE ORDERED that effective June 1, 2016, Father shall pay to Mother as and for child support the sum of \$520.00 per month, payable through the Support Payment Clearinghouse by an Income Withholding Order.

IT IS FURTHER ORDERED that at any time an Income Withholding Order is not paying the child support obligation in full, Father shall make full and timely payments directly to the Support Payment Clearinghouse. These payments are to be made through the Child Support Payment Clearinghouse, P.O. Box 52107, Phoenix, Arizona, 85072-2107, pursuant to an Income Withholding Order. The payment should show the case number and/or ATLAS case number and the name of the party paying support and the name of the party who will receive the payment.

If payments are made directly to the person who is to receive the support, the payments may be considered a gift and no credit will be given towards the support obligation.

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Any change in the paying party's employment and any change in the residential address of either party **must** be submitted to the Clerk's Office, in writing, within ten (10) days of the change (A.R.S. § 25-322(C)). Failure to notify the Clerk's Office of any change may be considered contempt of Court.

All obligations for child support for each child shall terminate upon a finding of this Court that the child has attained the age of 18 years, or is otherwise emancipated. If any child attains the age of 18 years while attending high school, support shall continue to be provided during the period in which that child is actually attending high school but only until the child reaches 19 years of age. Support for special needs children may continue past the age of 18 based on a finding of this Court. Provisions for health insurance and non-insured health expenses for the children, as provided for below, shall be deemed to be additional child support and shall be enforceable as such.

Pursuant to A.R.S. section 25-503(I), the right of a parent, guardian or custodian to receive child support payments as provided in this Order vests as each installment falls due. Each vested child support installment is enforceable as a final judgment by operation of law.

**Unreimbursed Medical Expenses**

Based on the current child support calculation,

IT IS FURTHER ORDERED that effective June 1, 2016, the parties shall pay all the children's unreimbursed medical, dental, and vision costs, as well as the child's travel expenses for Father to exercise his parenting time in the United States as follows: Mother 1/3 of the expenses and Father 2/3 of the expenses.

IT IS FURTHER ORDERED that Father shall be responsible for 100% of his travel expenses to exercise parenting time in Romania.

From the date of this order, out-of-network medical, dental, or vision expenses for the minor child shall be allowed only if:

1. The medical exigencies of the situation only permit out-of-network care;
2. The child's primary in-network treating physician has made a written referral to the out-of-network provider; or

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3. Mother and Father have agreed, in writing (or through an exchange of e-mails in which each of them affirmatively and unequivocally acknowledges the agreement), to such out-of-network expense being incurred.

IT IS FURTHER ORDERED that all expenses associated with reimbursement of out-of-pocket expenses associated with medical, dental, and vision shall be handled as outlined below. The procedure for reimbursement from the other party shall be handled as follows:

1. Reimbursement shall be made by calendar quarter (i.e., January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31).
2. A party who incurs expenses and wishes to seek reimbursement from the other party for those expenses shall maintain receipts for all such expenses during the calendar quarter in which they were incurred. Within 15 days after the end of the calendar quarter during which the expenses were incurred, the party who incurred the expenses shall send all such receipts to the other party at the same time. Thus, for example, by no later than April 15, a party who incurred in expenses between January 1 and March 31 must send the other party copies of the receipts evidencing all such expenses. In other words, receipts should be sent in a group once per calendar quarter, not on an individual (as incurred) basis.
3. The party requesting reimbursement shall send copies of the receipts to the other party either via e-mail or via Certified U.S. Mail, Return Receipt Requested. In either case, the party requesting reimbursement shall include an itemized list that summarizes the expenses for which reimbursement is being requested. The list shall include the date each expense was incurred, the name of the person or company who provided the service or goods, a brief description of the goods or services provided, and the total amount of the expense. The list also shall provide a total of all the expenses incurred during the calendar quarter and shall clearly state the amount of reimbursement requested.
4. Within 15 calendar days after receipt of the reimbursement request, the party from whom reimbursement is being sought shall either: (a) reimburse the requesting party in full for the amount requested or (b) notify the requesting party via e-mail of any disputed expenses and reimburse the requesting party for the first parent's share of the undisputed expenses. All reimbursement payments should be made either by electronic transfer of funds or by check sent via U.S. Mail, Return Receipt Requested.

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5. If the party from whom reimbursement is sought fails or refuses to reimburse the other party, the party who is seeking reimbursement may file a petition for reimbursement; however, any such petition must be filed no later than 60 calendar days after the party seeking reimbursement sent the other party the request for reimbursement.
6. Failure to comply with these provisions may result in denial of reimbursement or sanctions for failure to timely reimburse.

**Tax Exemption for Dependent Child**

The Court having considered section 27 of the Arizona Child Support Guidelines as it applies to the facts of this case,

IT IS ORDERED that Father may claim the parties' minor child as a dependent on Father's federal and state income tax returns every year.

IT IS FURTHER ORDERED that if Father is not current in the total Court-ordered child support obligation for the current calendar year and/or any Court-ordered arrearage payment due during the calendar year but claims the child, Father shall immediately remit any tax refund received to the Support Clearinghouse.

There being no further need to retain the exhibits not offered in evidence in the custody of the Clerk of the Court,

IT IS ORDERED that the Clerk permanently release all exhibits not offered in evidence to the counsel/party causing them to be marked, or to their written designee. Counsel/party shall have the right to refile relevant exhibits as needed in support of any appeal. Refiled exhibits must be accompanied by a Notice of Refiling Exhibits and presented to the Exhibits Room of the Clerk's Office. The Court's exhibit tag must remain intact on all refiled exhibits.

IT IS FURTHER ORDERED that counsel/party or written designee take immediate possession of all exhibits referenced above.

4:05 p.m. Matter concludes.



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IT IS ORDERED signing this minute entry as a formal, final, and appealable order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/ s / HONORABLE JAY M. POLK

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JUDICIAL OFFICER OF THE SUPERIOR COURT

ISSUED: Exhibit Release Form(s)

FILED: Child Support Worksheet

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.